MOTION FILED

NOV 15 1984

Nos. 84-28 and 84-143

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DONALD C. BROCKETT, ET AL.,

Appellants,

— against —

SPOKANE ARCADES, INC., ET AL.,

Appellees.

KENNETH EIKENBERRY, ET AL.,

Appellants,

— against —

J-R DISTRIBUTORS, INC., ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE*

JOHN J. WALSH
Attorney for
Morality in Media, Inc.
Movant-Amicus Curiae
32 Court Street
Brooklyn, New York 11201
(212) 858-4070

JAMES ALLEVA
475 Riverside Drive
New York, New York 10115
Of Counsel

Nos. 84-28 and 84-143

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

Donald C. Brockett, et al.,

Appellants,

— Against —

Spokane Arcades, Inc., et al.,

Appellees.

Kenneth Eikenberry, et al.,

Appellants,

— Against —

J-R Distributors, Inc., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES

COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

Morality in Media, Inc. hereby respectfully moves for leave to file the attached brief amicus curiae in support of the Appellants in the above matter for which probable jurisdiction has been noted and for which oral argument has been granted. The consent of the attorneys for the Appelants has been granted. The consent of the attorneys representing the American Civil Liberties Union of Washington, et al., was requested but refused.

INTEREST OF MORALITY IN MEDIA, INC.

Morality in Media, Inc. is a New York not-for-profit, interfaith, charitable corporation, organized in 1968 for the purpose of combatting the distribution of obscene material in the United States. This organization, now national in scope, has affiliates in six states and in Puerto Rico. It corresponds 8 times a year with

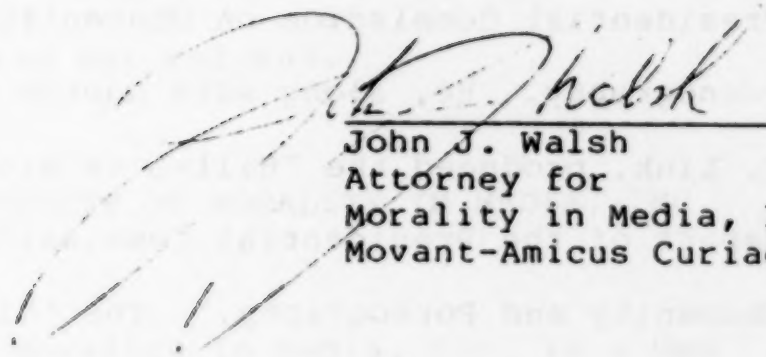
over 50,000 recipients of its newsletter located in every state of the United States. Its Board of Directors and National Advisory Board are composed of prominent businessmen, clergy and civic leaders. Its national headquarters is located at 475 Riverside Drive, New York, New York 10115.

The president of Morality in Media, Inc. is Reverend Morton A. Hill, S.J. In 1968 Father Hill was appointed to the Presidential Commission on Obscenity and Pornography. He, along with Doctor Winfrey C. Link, produced the "Hill-Link Minority Report of the Presidential Commission on Obscenity and Pornography." The "Hill-Link Minority Report" was cited by this honorable Court in Kaplan v. California, 413 U.S. 115, 120 n.4 and in Paris Adult Theatre I v. Slaton, 413 U.S. 49, 59 n.7 and n.8 (1973).

Morality in Media, Inc. files this motion and brief supporting the position of

the State of Washington because it believes that the decision in this matter will be of grave importance to the constitutionality of the obscenity laws of several states. It believes that its brief contains arguments not fully discussed by the parties.

Respectfully submitted,



John J. Walsh
Attorney for
Morality in Media, Inc.
Movant-Amicus Curiae

TABLE OF CONTENTS

Page

Motion of Morality in Media, Inc. to File Brief Amicus Curiae i

Summary of Argument 2

ARGUMENT--

THE USE OF THE TERM "LUST" AS PART OF THE DEFINITION OF "PRURIENT" IN THE WASHINGTON OBSCENITY STATUTE IS CONSTITUTIONAL 3

A. Roth is Still Good Law 3

B. Miller Did Not Change Roth 8

C. The A.L.I. Definition Has Never Been Adopted by This Honorable Court 9

D. The Meaning of "Lust" Has Not Changed 12

E. The Carter Interview is Irrelevant 13

F. The Case Law Supports The Use of The Term "Lust" 14

CONCLUSION 23

TABLE OF AUTHORITIES

Cases: Page

Adams Theatre Co. v. Keenan, 96 A.2d 519 (1953 5

American Civil Liberties Union v. City of Chicago, 121 N.E.2d 585 (1954) 6

Bantam Books v. Melko, 96 A.2d 47 (1953) 5

Bohin v. State, 274 S.E.2d 592 (1980) 17

Childs v. State of Oregon, 431 F.2d 272 (9th Cir. 1970) 19

City of Cincinnati v. King, 152 N.E.2d 23, aff'd, 159 N.E.2d 767 (1958) 18

Commonwealth v. Gordon, 66 D. and C. 101 (1949) 5

F.C.C. v. Pacifica Foundation, 438 U.S. 726 (1978) 7

Fletcher v. State, 633 S.W.2d 89 (1982) 16

Flying Eagle Publications v.United States, 273 F.2d 799 (1st Cir. 1960) 20

Hamling v. United States, 418 U.S. 87 (1974) 8

Page

Miller v. California,
413 U.S. 15 (1973) .....9, passim

New York v. Ferber,
457 U.S. 747 (1982) 7

Paris Adult Theatre I v. Slaton,
413 U.S. 49 (1973) 8

People v. Wendling,
258 N.Y. 45 (1932) 5, 6

Pinkus v. United States,
436 U.S. 293 (1978) 7, 8

Red Bluff Drive-In v. Vance,
648 F.2d 1020 (5th Cir. 1981) 16

Roth v. Goldman, 172 F.2d 788
(2d Cir. 1949) 7

Roth v. United States
354 U.S. 476 (1957) .....3, passim

Smith v. United States,
431 U.S. 291 (1977) 7

Spry v. State, 279 S.E.2d 2 (1970) 14

State v. Barrett, 292 S.E.2d 590,
cert. denied, 459 U.S. 1021 (1982).....20

State v. Bartanen, 591 P.2d 546,
cert. denied Bartanen v. Arizona,
444 U.S. 884 (1979) 17

State ex rel. Dowd v.
"Pay the Baby Sitter"
287 N.E.2d 650 (1972) 18

Page

Turoso v. Cleveland Municipal Court, 674 F.2d 486 (6th Cir.), cert.denied, 459 U.S. 880 (1982) 15

United States v. Keller, 259 F.2d 54 (3d Cir. 1958) 20

United States v. Levine, 83 F.2d 156 (2d Cir. 1936) 7

United States v. One Book Called "Ulysses", 5 F. Supp. 182 (S.D.N.Y. 1933), aff'd United States v. One Book Entitled Ulysses by James Joyce, 72 F.2d 705 (2d Cir. 1934) 4

United States v. One Book Entitled Ulysses by James Joyce, 72 F.2d 705 (2d Cir. 1934) 5

Walker v. Popenoe, 149 F.2d 511 (D.C. Cir. 1940) 6

Other Authorities

A.L.I. Model Penal Code §207.10(2) (Tent. Draft No. 6, 1957) .....4, passim

Webster's New Collegiate Dictionary (1976) 13

Webster's New World Dictionary (2d Ed. 1978) 12

Nos. 84-28 and 84-143

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

Donald C. Brockett, et al.,

Appellants,

— against —

Spokane Arcades, Inc., et al.,

Appellees.

Kenneth Eikenberry, et al.,

Appellants,

— against —

J-R Distributors, Inc., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES

COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE

Statement of Interest

As more fully explained in the accompanying motion, Morality in Media, Inc.

is a non-profit organization dedicated to combatting obscenity, pornography and indecency in media. Morality in Media, Inc. is before this honorable Court as amicus curiae to urge that the Washington anti-obscenity law be upheld as constitutional.

SUMMARY OF ARGUMENT

Morality in Media, Inc. contends that the use of the term "lust " in the State of Washington's anti-obscenity statute is a constitutional approach to defining the concept of "prurient." this honorable Court has indicated that the use of the term "lust" is proper in the obscenity field, and this view cannot be overruled through the concept of an alleged change in the meaning of words. The case law supports this use of the word "lust."

ARGUMENT

THE USE OF THE TERM "LUST" AS PART OF THE DEFINITION OF "PRURIENT" IN THE WASHINGTON OBSCENITY STATUTE IS CONSTITUTIONAL.

A. Roth Is Still Good Law

The Washington Anti-Obscenity Law incorporates the term "lust" in the definition of "prurient" in Section 1(8). Such an application does not render the statute unconstitutional. The case law clearly indicates that "lust" is an acceptable element of the test for obscenity as decided by this honorable Court.

In Roth v. United States, 354 U.S. 476 (1957), the Supreme Court capsulized the definition of obscenity as "material which deals with sex in a manner appealing to prurient interest." Roth, 354 U.S. at 487. The Court defined "prurient interest" at note 20 as "a tendency to excite lustful thoughts." The Court then remarked in the

same footnote that the meaning of obscenity "developed in the case law" was not significantly different from the definition suggested in the American Law Institute ("A.L.I.") Model Penal Code. The Model Code states that "a thing is obscene if, considered as a whole, its predominant appeal to is prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters." A.L.I. Model Penal Code §207.10(2) (Tent. Draft No. 6, 1957).

An examination of the cases relied on by Roth to develop its definition show that the appeal to lust or lasciviousness is the root of the Roth formulation. This case law defines prurient in terms of the ability to "stir the sex impulses to lead to sexually impure and lustful thoughts," United States v. One Book Called "Ulysses," 5 F. Supp. 182

at 184 (S.D.N.Y. 1933); whether the publication "has a libidinous effect" or "tend[s] to promote lust," United States v. One Book Entitled Ulysses by James Joyce, 72 F.2d 705 at 707 (2d Cir. 1934); whether it "suggests impure or libidinous thoughts, must invite to lewd and lascivious practices and conduct, must be offensive to chastity, must incite dissolute acts, must create a desire for gratification of animal passions, must encourage unlawful indulgences of lust, must attempt to satisfy the morbid appetite of the salacious, must pander to the prurient taste," Commonwealth v. Gordon, 66 D. and C. 101 at 132 (Philadelphia Co. 1949),"erotic allurement tending to excite lustful and lecherous desire," Adams Theatre Co. v. Keenan, 96 A.2d 519 at 521 (N.J. Sup. Ct. 1953); the tendency is to "excite lustful and lecherous desire." Bantam Books v. Melko, 96 A.2d 47, 58 (1953), quoting People v.

Wendling, 258 N.Y. 451 (1932). "Its calculated purpose or dominant effect is substantially to arouse sexual desires," American Civil Liberties Union v. City of Chicago, 121 N.E. 2d 585 at 592 (Sup. Ct. Ill. 1954) (citations ommitted and emphases added).

In Walker v. Popenoe, 149 F.2d 511 (D.C. Cir. 1940) the court said:

> If a publication as a whole is not stimulating to the senses of the ordinary reader, it is not within the statute. It would make nonsense of the statute to hold that it covers works of value and repute merely because their incidental effects may include some slight stimulation of the senses of the ordinary reader. The dominant effect of an entire publication determines its character. 'The standard must be the likelihood that the work will so much arouse the salacity of the reader to whom it is sent as to outweigh any literary, scientific or other merits it may have in the reader's hands.' (quoting

> United States v. Levine, 83 F.2d 156 (2d Cir. 1936)) (emphasis supplied).

In Roth v. Goldman, 172 F.2d 788, 794 (2d Cir. 1949), the concurring opinion stated:

> [A]t one time, a writing was held obscene if it would probably have a socially undesirable effect on the abnormal; but now the test has shifted and become that of the way the words will probably affect normal persons.

It is clear that Roth and the cases upon which it relies describe prurient in terms of an arousal of lust.

The Roth case has not been rejected by the Miller Court. On the contrary, Roth has been cited with approval in the Miller case as well as numerous other decisions by this Court, including New York v. Ferber, 457 U.S. 747 (1982), Smith v. United States, 431 U.S. 291 (1977), F.C.C. v. Pacifica Foundation, 438 U.S. 726, 745 (1978), Pinkus

v. United States, 436 U.S. 293, 299 (1978), Paris Adult Theatre I v. Slaton, 413 U.S. 49, 61 (1973) and many others. In Hamling v. United States, 418 U.S. 87, 11112 (1974) this Court stated:

> Other decisions dealing with the pre-Miller constitutionality or interpretation of 18 USC §1461 [18 USCS §1461] in other contexts have not retreated from the language of Roth. See e.g., United States v. Reidel, 402 U.S. 351, 28 L.Ed.2d 813, 91 S. Ct. 1410 (1971); Ginzburg v. United States, 383 U.S. 463, 16 L.Ed.2d 31, 86 S. Ct. 942 (1966); Manual Enterprises, Inc. v. Day, 370 U.S. 478, 8 L.Ed.2d 639, 82 S. Ct. 1432 (1962).

Roth, far from being outdated by the ravages of time or changes in the connotations of language, is still a vital case today.

B. Miller Did Not Change Roth

The original Roth test was made more

concrete in Miller v. California, 413 U.S. 15 (1973). Although the Miller Court added two prongs to the original test, it did not attempt to change the concept of "prurient." Prurience is mentioned in footnotes 1 and 2 of Miller. In footnote 1, this Court does cite the definition of prurience as given in the A.L.I. Model Penal Code but does not adopt it. Since this is the definition adopted by the California legislature and Miller is a California case, the citation to this definition adds no weight to the argument that this is the accepted definition.

C. The A.L.I. Definition Has Never Been Adopted By This Honorable Court

In deciding that the Washington law is overbroad in its use of the term "lust," the court below asserts that, since the A.L.I. definition is given last, this Court evidently meant for that alternative to be

the proper definition of prurient interest. This is a complete non-sequitur and defies reason. The Court "defined" prurient in terms of an appeal to lust. While it mentioned the A.L.I. formulation, it did not adopt it. Certainly the fact that the A.L.I. version is mentioned "last" creates no preference known to law.

The use of the introductory signal "i.e." meaning "that is" (from the Latin "id est"), signifies that the subsequent phrase "a tendency to excite lust" is the definition of prurient interest. By the use of "i.e.", nothing could be clearer that the intent is to define prurient interest, not give an example of prurient interest. Further evidence of this view is the appearance of the word "lustful"[1] in the tests applied by

---

1. The Roth Court noted that each trial court had given a jury instruction which included "lustful." 354 U.S. at 486. The Court then stated: "Both trial courts below sufficiently followed the proper standard. Both courts used the proper definition of obscenity." 354 U.S. at 489.

the trial judges that gained approval in the Roth holding.

This Court in Miller clarified the original Roth test. These additional elements to the obscenity test require that, before material is to be found obscene, it must depict or describe sexual conduct in a patently offensive way, and considered as a whole, it must lack serious literary, artistic, political or scientific value. It is possible, therefore, that material may have a "tendency to excite lustful thoughts" and thus be "prurient" but not obscene. The fact that prurient interest is not the keystone for determining obscenity, but rather is just one element of a three-prong test, contradicts the majority's argument that material that has "a tendency to arouse lustful thoughts and desires" would be obscene under the Washington statute.

The majority below notes that the Washington statute tracks the Miller test. Within the same opinion, the court claims that, to assure that protected speech is not

impermissibly regulated, "even subtle deviations from the Miller standards must be carefully examined." But the Washington Statute does not deviate from Miller; such an argument is a straw man.

D. The Meaning of "Lust" Has Not Changed

The court below also contends that the connotations that accompany the word "lust" have significantly changed since 1957. The court presents no studies, statistics, or other credible evidence that the phrase "incites lasciviousness or lust" means anything different in 1984 than in 1957. As Justice Wallace says: "The Supreme Court has not adopted the definitional change as embodied by the majority."

Webster's New World Dictionary (Second College Edition, 1978) defines "shameful" as "not just, moral, or decent; offensive." (emphasis added). The same reference work defines "lust" as "sexual desire b) excessive

sexual desire, esp. as seeking unrestrained sexual gratification." In Webster's New Collegiate Dictionary (1976), "shameful" is defined as "disgraceful" and "indecent", and "lust" is defined as "intense sexual desire, lasciviousness, an intense longing." Certainly, according to these dictionary definitions, a statute incorporating the concept of lust will not fall beyond constitutional limits as set by this Court.

E. The Carter Interview is Irrelevant

While a dictionary is a possible source of a word's contemporary usage, a single interview with a public figure--even an individual who has become President of the United States--is not. The majority opinion in the lower court cites a 1976 Playboy Magazine interview with Jimmy Carter in which he admitted that he had '"looked on a lot of women with lust [and]...committed adultery in my heart many times."' Aside from the

absurdity of claiming that this statement is reflective of the average person's contemporary usage of the word, Judge Wallace in his opinion notes that Carter "characterized lust as sin requiring divine forgiveness." This fact dispels the majority's argument that he "was expressing a healthy, wholesome, human reaction common to millions of well-adjusted persons."

F. The Case Law Supports The Use of the Term "Lust"

Many cases, including those cited by the majority below and by Judge Wallace, have held lust to be a proper definition of prurient. A few examples are in order.

One state court decision mentioned by Judge Wallace upholds jury instructions which use the "tendency to excite lustful thughts" approach, even though that state's obscenity statute employs the language of the A.L.I. Model Penal Code. In Spry v. State, 279

S.E.2d 2 (1970), a Georgia appellate court held that a lower court's instructions to the jury that material which appeals to prurient interest "has a tendency to excite lustful thoughts" is a "correct statement of law" and "gave the jury a better understanding of prurient interest." Spry, supra at 5.

In Turoso v. Cleveland Municipal Court, 674 F.2d 486 (6th Cir.), cert. denied, 459 U.S. 880 (1982), the Sixth Circuit upheld a definition in the Ohio state statute, Ohio R.C. §2907.01(F)(2) and (3):

> (F) When considered as a whole, and judged with reference to ordinary adults [sic]. Or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to such group, any material or performance is "obscene" if any of the following apply:
> (1) Its dominant appeal is to prurient interest;
> (2) Its dominant tendency is to arouse lust by display or depicting sexual activity, masturbation, sexual excitement, or nudity in a way which tends to represent

> human beings as mere objects of sexual appetite;
>
> (3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
>
> 674 F.2d at 491 (emphasis added).

Red Bluff Drive-In v. Vance, 648 F.2d 1020 (5th Cir. 1981), cited by the court below, far from approving the "shameful or morbid" language, merely stated:

> [T]he lack of a definition for the term "prurient interest" does not render the statute constitutionally deficient. Many jurors may find it helpful to learn that "prurient interest" means shameful or morbid but no conviction has, to our knowledge, been overturned for a trial court's failure to so instruct a jury.

Red Bluff Drive-In v. Vance, supra, at 1026. See also, Fletcher v. State, 633 S.W.2d 895, 896 (Tex. Ct. Crim. App. 1982), at 896. Red Bluff and Fletcher stand for the proposition that no definition for prurient appeal is required.

In Bohin v. State, 274 S.E.2d 592, 594 (1980), a Georgia appellate court cited Roth and approved an instruction to the jury that material "which appeals to the prurient interest is material which has a tendency to excite lustful thoughts."

In State v. Bartanen, 591 P.2d 546, cert. denied Bartanen v. Arizona, 444 U.S. 884 (1979), the Supreme Court of Arizona affirmed these jury instructions:

> The term appeal to the prurient interest means to excite lustful thoughts, a shameful or morbid interest in sex or nudity, arouse sexual desires or sexually impure thoughts, inclined to or disposed to lewdness, having lustful ideas or desires.
>
> 591 P.2d at 550 (emphasis added).

The court said at 552:

> We believe the trial court correctly instructed the jury. A.R.S. § 13-531.01(2)(a) stated that an item is obscene when "taken as a whole [it] appeals to the prurient interest." The

> statute also defines specifically the material that is to be considered obscene and the court instructed the jury pursuant to statute. The position taken by the trial court that an "appeal to the prurient interest" is to be judged by both the objective nature of the material and the human instincts which it tends to arouse is correct under the facts of this case. We believe therefore that the instructions, when read as a whole, provided the jury with an adequate and sufficient direction upon which they could reach a proper verdict based on the evidence before them.

In City of Cincinnati v. King, 152 N.E.2d 23, 25, aff'd 159 N.E.2d 767 (1958), an Ohio appellate court defined prurient as "[i]nclined to or charactrized by lascivious thought."

Another significant decision is State ex rel. Dowd v. "Pay the Baby Sitter", 287 N.E.2d 650 (1972). Dowd demonstrates that "prurient" can encompass the two versions in dispute in the existing instant case. The

Ohio court adopted a wide definition for "prurient":

> [T]o excite lustful thoughts; a shameful or morbid interest in sex; arouse sexual desires or sexual impure thoughts; inclined or disposed to lewdness; having lustful ideas or desires.

Dowd, supra at 654 (emphasis added).

The Eikenberry court below failed to cite or otherwise make note of a case from the Ninth Circuit which came to an opposite conclusion on the definition of "prurient interest." In Childs v. State of Oregon, 431 F.2d 272 (9th Cir. 1970), rev'd, 401 U.S. 1006, vacated, 443 F.2d 1177 (9th Cir. 1971) the court stated:

> Even if Childs is read as a departure from Jackson in that it defines "prurient interest" in terms of "lascivious thoughts" and "lustful desires" we do not view this definiton as impermissible in light of Roth v. United States,

> supra, 354 U.S. at 487 n.20 77 S. Ct. 1304.
>
> At least two other federal courts relying on Roth have adopted similar definitions. Flying Eagle Publications v. United States, 273 F.2d 799, 803 (1st Cir. 1960); United States v. Keller, 259 F.2d 54, 58 (3d Cir. 1958).

The Flying Eagle Publications case cited above quotes footnote 20 from Roth without mentioning the A.L.I. "shameful or morbid" definition of prurient interest. In fact, the phrase "material having a tendency to incite lustful thoughts" as well as the dictionary definition quoted in footnote twenty of Roth are cited as the Supreme Court's explanation of "prurient interest."

The Keller case merely cites a dictionary definition of "prurient" with no reference to "shameful or morbid" or any other limitation.

In State v. Barrett, 292 S.E.2d 590 (So. Car. Sup. Ct.), cert. denied, 459 U.S. 1021 (1982), the court decided that the state

statute, which defined prurient interest as "a shameful or morbid interest in nudity, sex or excretion and is reflexive of an arousal of lewd and lascivious desires and thoughts" did not infringe upon the Miller guidelines. In so deciding it referred at 591 to this Court's recognition in Miller of the legislative problems of defining obscenity:

> We emphasize that it is not our function to propose regulating schemes for the states. That must await their concrete legislative efforts.
>
> This Court in Miller noted:
>
> Under a National Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the "prurient interest" or is "patently offensive." These are essentially

> such standards could be articulated for all 50 States in a single formulation, even assuming the rerequisite consensus exists. When triers of fact are asked to decide whether "the average person, applying contemporary community standards" would consider certain materials "prurient," it would be unrealistic to require that the answer be based on some abstract formulation.
>
> Miller, supra at 30.

There is no hard and fast rule regarding the definitions of many concepts in this particular area of the law. Courts have struggled with the meaning of words in this field throughout the history of modern jurisprudence. There is certainly no exception for the definition of lust or the

definition of prurient interest. The case law and statutory law are split. As noted by Judge Wallace in his dissent:

> It is clear in Roth ...that "lustful thoughts" can be a part of the "prurient interest" definition. The majority would eliminate that part of Roth in order to arrive at its conclusion that the State of Washington may not constitutionally include "lust" as even a part of its definition (emphasis added).

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Ninth Circuit Should be reversed. The constitutional guidelines regarding obscenity were handed down by this Court in order to protect freedom of expression. Since the Washington statute follows these guidelines, it should not be struck down as unconstitutional for its use of "lust."

In defining "prurient" as "that which incites lasciviousness or lust," the Washington legislature was well within the case law that approves the use of the term "lust." The statute should not be struck down if the legislature has followed this Court's lead in its choice of terminology.

DATED: November 14, 1984

Respectfully submitted,

John J. Walsh
Attorney for
Morality in Media, Inc.
32 Court Street
Brooklyn, New York 11201
(212) 858-4070

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 1984, one (1) copy of the annexed motion for leave to file a brief amicus curiae and amicus curiae brief were mailed, postage prepaid, to:

Kenneth O. Eikenberry, Esq.
Christine O. Gregoire, Esq.
Office of the Attorney General
State of Washington
Temple of Justice
Olympia, Washington 98504
Attorney for Appellants

David A. Saraceno
Deputy Prosecuting Attorney
Donald C. Brockett
Prosecuting Attorney
Spokane County Court House
1115 West Broadway
Spokane, Washington 99260
Attorney for Appellants

James H. Lowe, Esq.
Bogle & Gates
The Bank of California Center
Seattle, Washington 98164
Attorney for Apellees

John Weston, Esq.
Brown, Weston & Sarno
433 North Camden Dr., Suite 433
Beverly Hills, California 90210
Attorney for Appellees

Robert Eugene Smith, Esq.
16133 Ventura Blvd.
Suite 1230
Encino, California 91436
Attorney for Appellees

Jack Burns, Esq.
Hubbard, Burns & Meyer
10940 NE 33rd Place, Suite 107
Bellevue, Washington 98004
Attorney for Appellees

Charles Stixrud, Esq.
4202 Wallingford Ave. N.
Seattle, Washington 98103
Attorney for Appellees

I further certify that all parties required to be served have been served.

John J. Walsh
32 Court Street
Brooklyn, New York 11201
Attorney for Morality in Media, Inc.
Movant-Amicus Curiae